

Message Text

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PAGE 01 KATHMA 03589 211205Z

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ACTION NEA-12

INFO OCT-01 ADP-00 PER-05 L-03 A-01 INR-10 /032 W

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P 211130Z AUG 73

FM AMEMBASSY KATHMANDU

TO SECSTATE WASHDC PRIORITY 6119

LIMITED OFFICIAL USE KATHMANDU 3589

FOR NEA/EX

E.O. 11652: N/A

TAGS: APER (FRANK H. NEWLAND); CASC: NP: PFOR

SUBJECT: PRIVILEGES AND IMMUNITIES - DETENTION OF EMBASSY STAFF

SUPPORT EMPLOYEE IN TRAFFIC ACCIDENT

1. EMBASSY WOULD APPRECIATE DEPARTMENT'S EARLY GUIDANCE RE
POLICE DETENTION IN TRAFFIC ACCIDENT OF CLERK (TELECOMMUNICATIONS)
FRANK H. NEWLAND, FSS-7.

2. NEWLAND ACCIDENTALLY STRUCK A NEPALESE MALE NATIONAL AT
NOON ON MONDAY, AUGUST 21, WHILE DRIVING FROM EMBASSY TO LUNCH.
POLICE TOOK HIM TO POLICE STATION AFTER PRELIMINARY ON-
THE-SPOT INVESTIGATION. STRICTLY SPEAKING, THIS IS NOT CONSIDERED
TO BE AN ARREST, BUT RATHER SOME SORT OF PREVENTIVE DETENTION
UNTIL THE VICTIM IS ABLE TO MAKE A STATEMENT TO THE POLICE.
NEVERTHELESS, NEWLAND WAS DETAINED IN POLICE STATION AGAINST
HIS WILL. VICTIM WAS UNCONSCIOUS IN THE HOSPITAL UNTIL EARLY
EVENING. INJURIES BELIEVED TO BE LIMITED TO FRACTURED FEMUR
AND ABRASIONS. NO INJURY TO NEWLAND OR ACCOMPANYING DEPENDENT SON.

3. IN THE ABSENCE OF ABILITY OF THE VICTIM TO SPEAK, POLICE
INSISTED ON DETAINING NEWLAND. WHEN CONSULAR OFFICER AND I
PROTESTED, FOREIGN MINISTRY OFFICIAL SAID POLICE WOULD RELEASE
NEWLAND IF I GAVE THEM WRITTEN GUARANTEE THAT EMBASSY WOULD BE
RESPONSIBLE FOR HIS FUTURE APPEARANCE IF REQUIRED. I
DEMURRED ON GROUNDS OF NEWLAND'S STATUS AS MEMBER OF EMBASSY'S
TECHNICAL AND ADMINISTRATIVE STAFF. AFTER FURTHER DEBATE,
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FIRST WITH MFA AND THEN WITH POLICE, NEWLAND FINALLY RELEASED

IN EARLY EVENING ON PRESENTATION BY NEWLAND OF HIS STATEMENT IDENTIFYING HIMSELF AS A MEMBER OF THE EMBASSY STAFF, WHICH HAD BEEN NOTARIZED BY CONSULAR OFFICER.

4. POLICE INVESTIGATION, IF ALLOWED TO PROCEED TREATING NEWLAND AS A FOREIGN NATIONAL WITH NO SPECIAL RIGHTS OR IMMUNITY, COULD CONCEIVABLY RESULT IN HIS BEING TRIED BEFORE TRAFFIC COURT AND POSSIBLY FINED. IMPRISONMENT HIGHLY UNLIKELY, HOWEVER, UNLESS INJURIES TO VICTIM WORSE THAN NOW APPARENT. NEWLAND'S INSURANCE AGENT ACTIVELY WORKING ON CASE, AND IT WILL PROBABLY BE SETTLED OUT OF COURT.

5. NO USEFUL PRECEDENT FOR THIS KIND OF INCIDENT AT THIS POST TO OUR KNOWLEDGE. 2 FAM 221.1 STATES CLEARLY USG POSITION THAT IMMUNITY OF CHIEF OF MISSION EXTEND TO ALL MEMBERS OF THE MISSION, INCLUDING STAFF MEMBERS WHO ARE NOT DIPLOMATIC OFFICERS. SECTION 41 OF WHITEMAN'S DIGEST OF INTERNATIONAL LAW, HOWEVER, QUOTES FORMER SECRETARY RUSK TO EFFECT THAT VIENNA CONVENTION ON DIPLOMATIC RELATIONS PROVIDES THAT MEMBERS OF ADMIN AND TECHNICAL STAFF HAVE IMMUNITY FROM CIVIL JURISDICTION ONLY WITH RESPECT TO OFFICIAL ACTS. WE BELIEVE CASE COULD BE MADE THAT NEWLAND WAS ON OFFICIAL BUSINESS, SINCE HE WAS GOING TO LUNCH FROM WORK AT EMBASSY AND PLANNED TO RETURN AFTERWARD.

6. I HAVE AN APPOINTMENT AUGUST 22 WITH FOREIGN SECRETARY KHATRI TO DISCUSS OTHER MATTERS, DURING WHICH I PLAN TO RAISE NEWLAND'S SITUATION AND EXPLAIN USG POSITION INFORMALLY ALONG LINES 2 FAM 221.1. I INTEND TO ADVISE FONSEC THAT WHILE THIS CASE WILL IN ALL PROBABILITY BE SETTLED OUT OF COURT, EVENT DOES RAISE QUESTION OF GON'S INTERPRETATION OF ITS OBLIGATIONS REGARDING IMMUNITIES FOR STAFF MEMBERS OF THIS EMBASSY AND WE WOULD WELCOME CLARIFICATION. (FYI: WE NOTE IN TREATIES IN FORCE THAT NEPAL ACCEDED TO VIENNA CONVENTION ON DIPLOMATIC RELATIONS "WITH RESERVATIONS," BUT HAVE NO INFORMATION AS TO WHAT RESERVATIONS ARE.)

7. WE WILL APPRECIATE ANY GUIDANCE DEPARTMENT WISHES PROVIDE.
COON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 21 AUG 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: garlanwa
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973KATHMA03589
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: KATHMANDU
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730825/aaaaaslw.tel
Line Count: 98
Locator: TEXT ON-LINE
Office: ACTION NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 04 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04-Jan-2002 by willialc>; APPROVED <18-Jan-2002 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PRIVILEGES AND IMMUNITIES - DETENTION OF EMBASSY STAFF SUPPORT EMPLOYEE IN TRAFFIC ACCIDENT
TAGS: APER, CASC, PFOR, NP, (FRANK H NEWLAND)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005